



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

September 13, 2016

Mr. Jerry Gross  
Marlin Hutterian Brethren  
21344 Road 18 NE  
Marlin, Washington 98832

Re: Application for Change under Ground Water Certificate No. G3-21015C

Dear Mr. Gross:

Enclosed is the Department of Ecology's *Report of Examination*. This report contains our decision regarding your application for change.

Your application for change has been approved.

You have a right to appeal this action to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this document. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal, you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903



Marlin Hutterian Brethren

Page 2

September 13, 2016

*For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>.*

*To find laws and agency rules visit the Washington State Legislature Website:*

*<http://www1.leg.wa.gov/CodeReviser> .*

If you have any questions, please contact Kevin Brown at 509-329-3422.

Sincerely,



Keith L. Stoffel

Section Manager

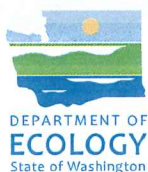
Water Resources Program

Eastern Regional Office

KLS/KB:md

Enclosures: Report of Examination  
*Your Right To Be Heard*

**By Certified Mail:** 7015 0640 0003 6619 7201



State of Washington  
REPORT OF EXAMINATION  
FOR WATER RIGHT CHANGE

Changed Place of Use

PRIORITY DATE  
April 13, 1973

WATER RIGHT NUMBER  
G3-21015

MAILING ADDRESS  
Jerry Gross  
Marlin Hutterian Brethren Trust  
21344 Road 18 NE  
Marlin, WA 98832

SITE ADDRESS (IF DIFFERENT)

Total Quantity Authorized for Withdrawal

WITHDRAWAL RATE  
1200

UNITS  
GPM

ANNUAL QUANTITY (AF/YR)  
400

Purpose

PURPOSE	WITHDRAWAL RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Agricultural irrigation of 160 acres	1200		GPM	400		04/01 - 10/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA					
GRANT	GROUNDWATER		41-LOWER CRAB					

SOURCE FACILITY/DEVICE	PARCEL	WELL TAG	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Well	180343000	N/A	20N	29E	22	NW	47.217434	119.161619

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)

180317001, 180324000, 180323000, 312058000

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

160 acres within the following: Lot 1 of Cegnar Short Plat (SP 9-90) being within the S½NW¼ of Section 14 and the west 1700 feet of the following legal description: S½NW¼ and SW¼ of Section 11 and N½ of Section 14, T. 20 N., R. 29 E.W.M.

REPORT OF EXAMINATION FOR WATER RIGHT CHANGE

### Proposed Works

1 well and pivot irrigation system

This change allows for the change in place of use pending entry into a Water Service Contract (WSC) with the ECBID for the remaining property. At such time this right will be standby reserve (RCW 90.44.510). Until such time as the applicant enters into a contract the right will remain to be exercised.

### Development Schedule

BEGIN PROJECT

Complete

COMPLETE PROJECT

Complete

PUT WATER TO FULL USE

Complete

### Measurement of Water Use

How often must water use be measured?

Weekly

How often must water use data be reported to Ecology?

Upon request

What volume should be reported?

Total Annual Volume

What rate should be reported?

Annual Peak Rate of Withdrawal (gpm)

### Provisions

The owner of this water right has proposed to enter into a contract with the East Columbia Basin Irrigation District for delivery of surface water from the Columbia Basin Project (Project). Surface water served by the Project is to be used in place of or instead of water that could be withdrawn under this state-issued water right, not in addition to it.

In accordance with RCW 90.44.510, Ecology "shall issue a superseding water right permit or certificate for a groundwater right where the source of water is an aquifer for which the department adopts rules establishing a groundwater management subarea and water from the federal Columbia Basin project is delivered for use by a person who holds such a groundwater right. The superseding water right permit or certificate shall designate that portion of the groundwater right that is replaced by water from the federal Columbia Basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available."

This water right authorizes use of groundwater in the Odessa Ground Water Management Subarea.

This provision is being added to clarify that this right will be a standby reserve right that is entirely supplemental to Columbia Basin Project water. Groundwater withdrawn under this authorization shall only be used when delivery of Project water is interrupted during the Project's irrigation season. Groundwater shall not be used before Project water delivery begins each season and after Project water delivery ends each season.



Should the contract/delivery of water from the Project be terminated by the water right holder, landowner or successor, this standby/reserve right shall be subject to cancellation. However, such cancellation shall not occur if the contract/delivery of water from the Project is terminated as a result of an action outside of the control of the water right holder, landowner or successor, such as the failure of the United States Bureau of Reclamation and an irrigation district to renew their contract.

Transfer of this standby reserve water right to other lands, or change in the nature or purpose of use of this right is prohibited.

Groundwater withdrawal facilities authorized by this water right must be maintained in operating condition.

#### **Wells, Well Logs and Well Construction Standards**

All wells constructed in the state must meet the construction requirements of WAC 173-160 titled "Minimum Standards for the Construction and Maintenance of Wells" and RCW 18.104 titled "Water Well Construction". Any well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard must be decommissioned.

All wells must be tagged with a Department of Ecology unique well identification number. If you have an existing well and it does not have a tag, please contact the well-drilling coordinator at the regional Department of Ecology office issuing this decision. This tag must remain attached to the well. If you are required to submit water measuring reports, reference this tag number.

Installation and maintenance of an access port as described in WAC 173-160- 291(3) is required.

#### **Measurements, Monitoring, Metering and Reporting**

An approved measuring device must be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173, which describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

#### **Water Use Efficiency**

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

#### **Schedule and Inspections**

Department of Ecology personnel, upon presentation of proper credentials, will have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that a valid right exists; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No.CG3-21015C, subject to existing rights and the provisions specified above.

### Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

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<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this 13<sup>th</sup> day of September 2016.

  
Keith Stoffel, Section Manager

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## **BACKGROUND**

An application for change/transfer was submitted on January 14, 2016. The applicant proposes to change the place of use to Ground Water Certificate G3-21015.

A notice of application was duly published in accordance with RCW 90.03.280 in the Columbia Basin Herald on March 24 and 31, 2016, and no protests were received.

This application is categorically exempt from the provisions of the State Environmental Policy Act (SEPA) of 1971, Chapter 43.21C RCW.

## **INVESTIGATION**

Certificate G3-21015 authorized the use of 1200 gallons per minute, 400 acre-feet per year for the irrigation of 160 acres; 70 acres in Section 15, 70 acres in Section 14 and 20 acres in Section 11. Section 15 is also authorized 500 acres under Certificate 6260-A. Originally there was four large center pivots, one small pivot and corner areas irrigated in Section 15. The applicant reduced the pivot sizes, changed the irrigation practices and has been seasonally transferring portions of water right G3-21015 to section 11 and 14. They then entered into two water service contracts with the ECBID for 500 acres in Section 15 (Certificate 6260-A) and 60 acres in Section 11 and 14 (G3-21015). The ECBID will not enter into a contract for the remaining acreage because the water right was not permanently transferred to the lands they have been irrigating. A WSC must have a water right underlying the contract land. The intent of this application for change is to permanently transfer the right to the lands that have been irrigated under the seasonal change program so they can enter into a water service contract for the remaining acres under Certificate G3-21015.

The authorization was issued for 2.5 acre-feet per acre, consistent with the Odessa Subarea Rule, WAC 173-130A which allows for up to 2.5 acre-feet per acre. Crops are grown annually and vary from potatoes to wheat.

The water use is within the Odessa Special Study Area and predates the Record of Decision, signed April 2, 2013, for the Odessa Subarea Replacement Water Program.

### **Evaluation of the Water Right and Beneficial Use Analysis:**

The Washington State Supreme Court, in *Okanogan Wilderness v. Town of Twisp and Department of Ecology*, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right.

Ground Water Certificate G3-21015 confirmed a use of 1200 gallons per minute 400 acre-feet per year for the irrigation of 160 acres. This right has been determined to have been perfected and put to beneficial use and has continued to be irrigated in the amount of 160 acres.



### **Hydrologic/Hydrogeologic Evaluation**

Applications for change/transfer of water right permits and certificates of ground water are governed by RCW 90.44.100, which states in part that: the holder of a valid right to withdraw public ground waters may, without losing his priority of right, construct wells at a new location in substitution for, or in addition to, those at the original location, or he may change the manner or the place of use of the water. Such amendment shall be issued by the Department only on the conditions that: (1) the additional or substitute well or wells shall tap the same body of public ground water as the original well or wells; (2) use of the original well or wells shall be discontinued upon construction of the substitute well or wells; (3) the construction of an additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (4) other existing rights shall not be impaired. The Department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment.

Since the applicant is not asking for a change in source location, a same body of public ground water determination is not conducted in this report.

### **Impairment Considerations**

"Impair" or "impairment" means to 1) adversely impact the physical availability of water for a beneficial use that is entitled to protection and/or 2) to prevent the beneficial use of the water to which one is entitled, and/or 3) to adversely affect the flow of a surface water course at a time when the flows are at or below instream flow levels established by rule (POL-1200); and/or 4) degrade the quality of the source to the point that water is unsuitable for use by existing water right holders (WAC 173-150). Demonstration of impairment would require evidence of a substantial and lasting or frequent impact reflecting such conditions.

The proposed change in the place of use will not impair existing water rights. The proposed change in the place of use will not enlarge the quantity of water identified above.

The property within the proposed place of use lies within the boundary of the Columbia Basin Project and potentially within delivery of the irrigation district. Should contracts be issued by the district that include lands developed under this authorization, these lands will be subject to RCW 90.44.510. If water from facilities of any legally formed irrigation district is used on any or all of the lands described and developed herein as the place of use, the quantities of water withdrawn under this authorization shall be proportionately reduced to correspond to the acreage for which district water is not available. RCW 90.44.510 confirms that should water be supplied to these lands (agricultural or non-agricultural) and replaced with Columbia Basin Project Water, the permit or certificate, or portion thereof shall be designated as a standby or reserve water right. The total number of acres irrigated must not exceed the quantity of water authorized by the Bureau of Reclamation and the authorized number of acres under the permit or certificate.

### **Public Interest Considerations**

There has been no public expression of protest or concern regarding the subject proposal, and no findings through this investigation indicate that there would be detrimental impact to the public welfare through issuance of the proposed change.



## CONCLUSIONS

It is the conclusion of this examiner that, in accordance with Chapters 90.03 and 90.44 RCW, a valid right exists. This application for change to change the place of use will not enlarge the quantity of water identified, nor will it impair existing rights or be detrimental to the public welfare provided the terms and conditions are followed.

## RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Ground Water Certificate G3-21015 be approved in the amounts and within the limitations listed below and subject to the provisions.

### Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

- 1200 gpm
- 400 acre-feet per year
- Agricultural irrigation of 160 acres

### Place of Use

160 acres within the following: Lot 1 of Cegnar Short Plat (SP 9-90) being within the S½NW¼ of Section 14 and the west 1700 feet of the following legal description: S½NW¼ and SW¼ of Section 11 and N½ of Section 14, T. 20 N., R. 29 E.W.M.

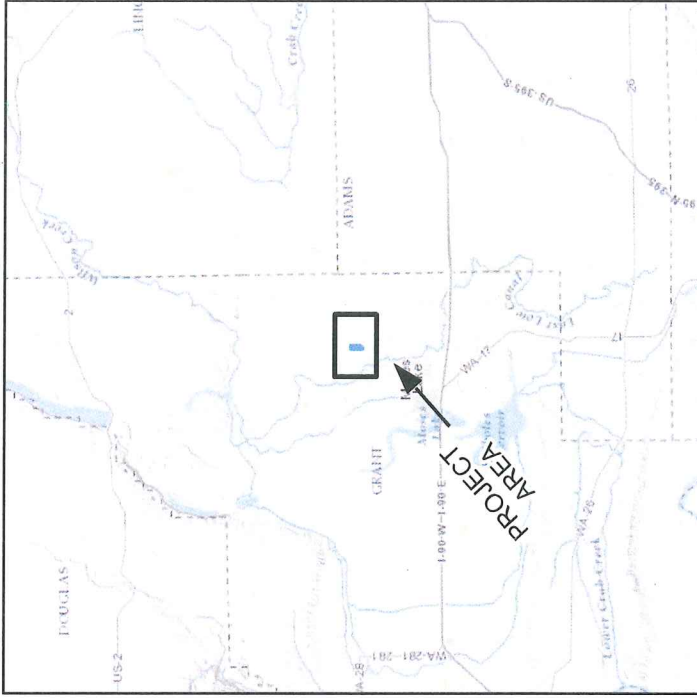
Report by: Kevin Brown  
Kevin Brown

9/13/14  
Date



# ATTACHMENT 1

Marlin Hutterian Brethren  
G3-21015  
T20N/R29E



Basemap - (ESRI US Topographic Maps)

## Legend

- Authorized Place of Use
- Townships
  - Sections

## Authorized Point of Withdrawal

(Source locations may vary in their accuracy and precision as stated within the body of the report.)

## Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.



Basemap - (NAIP 2015 Air Photo)

Map Date: 8/25/2016

